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No. 82-823

In the

Supreme Court of the United States

OCTOBER TERM, 1982

ARTHUR PIELET, JAMES PIELET, and ROBERT PIELET, Individually and as Trustees of the PIELET BROS. Employees' Profit-Sharing Plan and JOLIET RAILWAY Employees' Profit-Sharing Plan, and PIELET BROS. SCRAP IRON & METAL, INC., and JOLIET RAILWAY EQUIPMENT CO.,

Petitioners,

vs.

SEYMOUR PIELET, IRVING PIELET, and SAMUEL PIELET,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Scheffer Press, Inc.—(312) 263-6850

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REASONS FOR DENYING THE PETITION

The Petition fails to show why this diversity case, concerning only proper construction of a limited, *sui generis* Illinois contract not to compete, is worthy of *certiorari*. The case is a run of the mill "family fight."

No federal question is presented.

The question presented by the petition is important only to the litigants; no showing is made that the decision of the Court of Appeals conflicts with any decision of the Illinois Supreme Court or an Illinois Appellate Court. As shown below, the decision is entirely in accord with the decisions of the Illinois courts of review; and, certainly, it presents no question of public importance. This Court does not sit as a super court of appeals to review anew all questions of state law determined by the twelve courts of appeal. "[Certiorari] jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing" (*Magnum Import Co.* v. *Coty*, 262 U.S. 159, 163), "or for the benefit of the particular litigants" (*Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 74), but to decide issues, "the settlement of which is of importance to the public as distinguished from that of the parties" (*Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387, 393).

The district court ruled that the degree of permitted competition between the Pielet brothers was governed by the terms of limited noncompete covenants contained in employment agreements and not by the terms of an earlier profit-sharing agreement. The logic was that the later employment agreements controlled since all the brothers (all of the stockholders), were parties to both agreements. Since the district court felt the meaning of the covenants was ambiguous and required resort to extrinsic evidence, the case was submitted to a jury on a special interrogatory as to the breadth of the noncompete clause.

The parties agreed upon this procedure in the district court as recognized by the Seventh Circuit:

> After extensive consultation with counsel for both sides, the district court submitted a single special interrogatory to the jury concerning the meaning of section 7 of the employment agreements. *Both sides agreed to the procedure and upon the language of the special interrogatory which read*:
>
> > In using the language 'employee shall not own, operate, or participate in the ownership or operation of a scrap yard or shredder,' in paragraph 7 of the employment agreements, did the parties intend to prohibit Seymour, Samuel, and Irving Pielet from buying and selling scrap metal within 100 miles of the City of Chicago?
>
> The judge plainly thought that an answer to this one question furnished the key to the entire case. The jury answered the interrogatory 'no' and the court entered judgment for the plaintiffs and against Arthur and the other defendants.

Op. 7th Cir., Petitioners' App. at 6a; Emphasis supplied. The Seventh Circuit further stated:

> There can be no question on this record that defendants-appellants agreed to the submission of the special interrogatory, the entry of judgment based on the answer, and the language of the special interrogatory.

Op., 7th Cir., Petitioners' App. at 13a. The cases are uniform under Rule 49(a) of the Federal Rules of Civil Procedure that a party must object to a special interrogatory if he wishes to complain of it on appeal. Petitioners refer to no conflict between circuits on this score because there is none.

The Seventh Circuit further held that the ERISA and other issues in the case were "mooted" by the consent to the special interrogatory procedure and under the express language of Rule 49(a). *Id.*, Petitioners' App. at 7a.

Respondents suggest that the Petition for a Writ of Certiorari is little short of frivolous.

Respectfully submitted,

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